

CHAPTER V.

OF LAND AND LAND REVENUE.

All public roads etc., and all lands which are not the property of others, belong to Government.

37. [a] (1) All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nallas, lakes, and tanks, and all canals, and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights in or over the same, or appertaining thereto the property of Government; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation.—In this section “high-water-Mark” means the highest point reached by ordinary spring-tides at any season of the year.

[b] (2) Where any property or any right in or over any property is claimed by or on behalf of Government or by any person as against Government, it shall be lawful for the Collector or a survey officer, after formal enquiry of which

Section 37—

(i) *Substitute* the following for G. 7 :—

“Where there is no municipality public streets vest in Government except in so far as any rights of any persons may be established in or over them.’ As the public are entitled to enjoy the whole of public street Government have no power, under the existing law, to close such a street or to sell or lease out any part of it. Nor can Government allow any projection over a street if such projection prevents the ordinary use of the street as a street. Municipalities are in a better position in this respect than Government as under sections 90 (1) and 93 of the Bombay District Municipal Act, 1901, and sections 114 (1) and 120 (2) of the Bombay Municipal Boroughs Act, 1925, they have the power to sell or lease public street land in certain circumstances.

2. In the case of street lands which vest in Municipalities statutorily (i.e. under such provisions as section 50 (2) of the Bombay District Municipal Act, 1901, or section 63 (2) of the Bombay Municipal Boroughs Act, 1925), the sub-soil rights belong to Government. In order to enable the Municipalities to sell or dispose of such lands, Government have, on administrative grounds, approved of the policy of vesting these rights in these bodies and the Commissioners are delegated with the power to sanction such vesting. In vesting in a Municipality the sub-soil of street land proposed to be sold, the Commissioner may charge occupancy price and assessment. Lands granted by the Municipality for set-forwards should also be assessed, except in cases where an owner agrees to set-forward one part of his property and set-back another. In these latter cases no assessment should be levied if the Commissioner is satisfied that the assets of Government in the way of sub-soil rights are not decreased.”

(ii) *Delete* G. 30 inserted by addendum No. 93 of Supplement No. I and G. 31 inserted by addendum No. 11 of Supplement No. II.

(G.Rs. Nos. 5965, dated 20-8-1886; 2640, dated 20-10-1921, 28-4-1931 and 29-3-1932; 2558/28, dated 20-8-1931 and 2558/28-II, dated 9-6-1932.)

Section 37—

Substitute the following for G. 12 :—

“Easements. See G. 12 under section 61

No. 11

Section 37—

To the footnote on page 58 of the Code *add* “ and section 63 (2) Bombay Act XVIII of 1925 ”.

due notice has been given, to pass an order deciding the claim.

[^b] (3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed by the Collector under sub-section (1) or sub-section (2), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

[^b] (4) Any person shall be deemed to have had due notice of an enquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Governor in Council.

[a] This was originally s. 37. It was numbered sub-section (1) of section 37 by Bom. XI of 1912, s. 1.

[b] These sub-sections were added by Bom. XI of 1912, s. 1.

SUMMARY UNDER SEC. 37.

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|---|--|
| 1 | Section 37, history, scope and meaning of N 1,2,3,5. G 5,9,17,20. J 3,4,6,7,11,13. |
| 2 | Adverse possession of or against Govt. ... G 10, 16, 19. J 6, 10 |
| 3 | Appeals ... G 26 |
| 4 | Appropriations of land ... G 21, 25 |
| 5 | Beds of rivers &c. ... G 2 |
| | (a) Govt. villages ... J 2,8 |

(b) Govt. in Inam and khoti villages J 9, 12

(c) Govt. in municipal limits see
municipality rights of.

6 Easement	...	...	...	G 12, 13
7 Fishing	...	...	...	J 5
8 Forest lands	...	...	...	G 3, 15, 23
9 Land Acquisition Act	...	...	...	G 24
10 Municipality, rights of	...	...	...	G 6, 7, 8, 11, 28
11 Notice to Govt.	...	...	...	G 14
12 Roads, lanes &c	see	municipality rights		
	of	them.		
13 Rules under	...	...	...	N 4. G 27
14 Talukdars	...	...	...	G 18
15 Village site rights to	...	...	...	G 1, 22
16 Waste lands	...	...	...	G 4. J 6, 7

NOTES.

N. 1. Section.—History of—Sub-section (1) was the original section 37 as passed in 1879. It was then based on section 7 of Regulation 17 of 1827 and section 11 of Bombay Act IV of 1868.

N. 2. Section additions to sub-sections 2, 3 and 4 have been added by Bombay Act XI of 1912, as already pointed out.

N. 3. Section—scope and meaning.—This Section is one of the most important sections in the Land Revenue Code. It is therefore necessary to explain the scope and meaning of the original Section and the amendments made in 1912.

In the case of *Suranna vs. The Secretary of State* printed at I. L. R. 24 Bombay 435, the Hon. Mr. Justice Parsons remarked on the old Section (now clause 1), that no provision was made therein for any inquiry by the collector nor was any power given to him to determine what is or what is not Government land and what are the rights of individuals.

The objects and reasons of sub-sections (2) and (3), newly added, were as follows:—In its original form section 37 only provided for the disposal by the Collector of Government property, and did not provide for any enquiry where there was a dispute as to whether property belonged to Government or not. This is now provided for in the new sub-section (2). In the new sub-section (3) the provisions of section 135, (which is now repealed) are included in an amplified form so as to cover all descriptions of property on which orders may be passed under sub-section (1) or (2). This extension is necessitated by the uncertainty whether the period of limitation prescribed in article 14 of the first Schedule of the Limitation Act applies to cases not covered by the original section 135.

N. 4. Rules under sub-section (4) *Vide* G. 27.

N. 5. Connection with section 61.—This section is connected with Section 61. A man cannot be called a trespasser upon land under Section 61 if he has some private rights in that land.

GOVERNMENT ORDERS.

G. 1. Village sites.—According to the custom of the country, the Proprietary right in all village sites vests in Government unless it has been unmistakably purchased.

- (1) Government circular No. 3361. of 12th June 1873
- (2) G. R. No. 4239 of 24th July 1873.
- (3) G. R. „ 5292 of 22nd September 1873.

G. 2. Beds of rivers:—The sovereign's rights are as great under the Hindu and Mahomedan laws as under the English. The property in the beds of navigable rivers as in the seashore and the bottom of the sea is reckoned amongst the *Jura regalia* of the crown.

- (i) 8 Bombay H. C. R. 87 and
- (ii) G. R. No. 1604 of 10th March 1877.

G. 3. Transfer of Forest Land.—The sanction of Government should be obtained in each case of transfer to the Forest Department of land required for forest chowkis and compounds. (G. R. No. 5724, dated 20th September 1877).

G. 4. Waste lands.—Waste lands belong to the state and a permanent private right cannot be implied from the levy of a rate on a casual and desultory use of the soil G. R. 2493 of 4-5-81.

G. 5. Proprietorship, the chief point.—Section 37 of the Land Revenue Code is the only law by which an Assistant Collector holding an enquiry into claims to sites can be guided. Act XI of 1852, Bombay Act II of 1863 and Section 128 of the Code, if they were applicable, would only affect claims to exemption from payment of land revenue, not claims to proprietary rights (G. R. No. 7996, dated 9th October 1884).

G. 6. Rights to beds of tanks, &c., in Municipal limits.—Section 37 of the Land Revenue Code only declares the right of Government to the beds of rivers and to streams 'which are not the property of individuals or of 'aggregates of persons legally capable of holding property,' and would not therefore affect Section 17 (b) of the Bombay District Municipal Act, 1873,[†] if it vested such beds in Municipalities. But the words used in Section 17* (b) of the last-named Act are 'all public streams.' It does not appear that those words include either the banks or the beds of such streams, which, as section 17 now stands, do not vest in Municipalities unless transferred to them by Government under clause (c) of that section. (G. R. No. 4551, dated 6th June 1885.)

G. 7. Rights to public streets in Municipal limits.—The only case in which a Municipality can sell or grant any portion of a public street to an

* Now Section 50 (2) (b) of Bombay Act 3 of 1901.

individual house-holder is under clause 2* of Section 30 of Bombay Act VI, 1873† which authorizes Municipalities for the purpose of improving the line of any public street to allow any house or building in that street to be set forward. Where there is no Municipality the public streets vest under Section 37 of the Land Revenue Code in Government. But they vest in Government like other lands "except in so far as any rights of any persons may be established in or over the same." In public streets the public have a permanent right of way extending to every portion of such streets, and it would be an infringement of this right for Government or their officers to sell or grant any land belonging to a public street to an individual. Where therefore there is no Municipality the right to dispose of any portion of a public street is more limited than in a Municipal district, for Government have not even the legal power to allow a house to be set forward. (G. R. No. 5965, dated 20th August 1886.)

G. 8. Open ground not forming part of public roads.—The order in G. R. No. 5965 dated 20th August 1886 regarding encroachment on public roads is inapplicable to any open space or portion of open ground which cannot be reasonably claimed as forming part of public road. Whether any such piece of ground is a part of public road or not is a question of fact which must be determined according to the circumstances in each case. If a person has taken possession of land to which he has no right, the law should be enforced against him with the view of ousting him or if that is found inexpedient, the occupancy should be recognised to be his on his giving usual occupant's Kabulayat and paying the usual occupancy price, if any. (G. R. 3815 dated 23rd June 1887.)

G. 9. The clause 'Meaning of the clause 'except in so far etc.'—except in so far as any rights

* Now clause 1 of s. 90 of Bombay Act 3 of 1901.

&c. may be established in and over the same' has the effect (a) of precluding partial proprietary rights and (b) of throwing the burden of establishing private rights on the persons who assert them (G. R. 1697 of 13th March 1888).

G. 10. Adverse possession.—60 years of continuous possession in the open assertion of an adverse title would be necessary to bar the Secretary of State from recovery of possession.

(i) G. R. 728 dated 28-1-1891.

(ii) G. R. 3274 dated 12-5-1891.

(iii) I. L. R. 9 Madras 183.

G. 11. Rights to town walls, etc., in Municipal limits.—Municipalities have no right to the sites of town walls or bastions. The Municipal Act vests these in Municipalities as trustees. They have no power to remove them, unless the walls become dangerous, nor would such removal, if effected, operate to vest the sites in Municipalities.

The rights of Municipalities in respect of public roads are very limited. Though the road vests in them, the soil does not belong to them. The only powers which Municipalities have is to make, repair and keep properly cleansed such high-ways and do such things upon them as are necessary for conservancy, but they have no right to obstruct or divert them. They can, however, divert new streets and roads which they may have laid out or made. Any house or building may be set forward for improving the line of any public street, but such permanent alienation would require sanction. Municipalities have no control over provincial high-roads or trunk roads. (G. R. No. 1890, dated 13th March 1891.)

G. 12. Easement.—No grant of an easement in respect of Government land may be made by any officer except with the express sanction of Government (G. R. 3864 of 6-6-91 and I. L. R. 9 Bombay 227)

G. 13. Easement.—An easement to take water from a river would be acquired by 60 years enjoyment as of right against Government.

- (i) I. L. R. 14 Bom. 220.
- (ii) Sect. 15 of the Easement Act 1882.
- (iii) G. R. 1376 of 24-2-1892.

G. 14. Notice to Government.—A notice published in a newspaper should not be accepted by the Collector as sufficient for the purposes of the Civil Procedure Code G. R. 4803 of 3-6-1892.

G. 15. Transfer of Forest land for Government purposes.—When land is required for Government purposes no formal alienation thereof from the Reserved forest is necessary. (G. R. No. 7779, dated 19th September 1894).

G. 16. Enjoyment for a considerable time raises a presumption of ownership.—Government concurred in the following opinion of the Advocate-General, who said as follows:—

“The decision of Ismail Ariff *vs.* Mahomed Ghose (L. R. 20, I. A. 99) has no application to suits for restoration of possession brought against Government by persons who had been evicted under the Land Revenue Code. But if the person evicted proves that he was in possession and enjoyment for a considerable time, a presumption of full ownership arises, which throws upon Government the onus of showing that the land was not private property (*vide* Section 110, Indian Evidence Act), and it would not be sufficient to rely only upon the words of Section 37 (*vide re* Antaji Keshao Tambe, I. L. R. 18 Bombay, 674, and Secretary of State *vs.* Jaithabhai Validas, I. L. R., 17 Bombay, 299). It would not be necessary for the person suing to shew a title of possession for 60 years.

“But in cases where the possession is not long, the state of the land before possession was taken, and the circumstances under which the possession was taken would in most cases, even where there

is no entry in Government records, be sufficient to show whether the land was private property or not" (G. R. No. 1873, dated 27th February 1896.)

G. 17. Proof sufficient to evict.—When executive officers intend to evict persons in unauthorized possession they must be prepared to give evidence of Government title (a) documentary from the records or (b) oral that the land in dispute has been at some time or other within 60 years unoccupied, that is, not in the juridical possession of any private person. Stacking of wood or grass is not tantamount to juridical possession. (G. R. No. 9661, dated 1st December 1896.)

G. 18. Talukdars' rights of—Government have no objection to the disposal by the Talukdars of miner products *e. g.* stone and kunker &c in their lands.

The rights of a Talukdar to cultivate the land in a river bed included in his estate may be continued without question G. R. 5096 of 6-8-1898.

G. 19. Adverse possession.—When a person is in possession of land, it must be presumed that he has a title, unless and until it can be shown, that at some time within 60 years neither he nor anybody else, did or could claim the land as of right with power to exclude all other possession G. R. 3169 of 22-5-1900.

G. 20. Section—scope of—Wrong entry in Survey Papers as Government land.—Certain land was wrongly entered in Survey Papers as Government land and subsequently sold as such. When the real holder came forward afterwards and claimed the land Government offered him the purchase money and some additional compensation G. R. 7126 of 14-11-1900.

G. 21.—Appropriations.—Assignment of sites for Itga, temple, &c., and for extension of village site are appropriations under section 37 rather than assignments under Section 38. (G. R. No. 555 dated

29th January 1901, and G. R. No. 9424, dated 3rd October 1906.)

G. 22. Village sites—Abandoned village sites vest in Government as waste land. Recent and ambiguous acts such as depositing manure and fuel, tethering cattle, are not such acts as to raise presumption of title under sec. 110 of Evidence Act,

(i) G. R. No. 8413 of 27-5-1907

(ii) I. L. R. 16 Bom. 338

G. 23. Forest lands.—All Collectors may sanction the use of forest land to another government purpose up to a limit of 5 acres without reference to Government, if the Conservator concerned has no objection. The sanction of the Commissioner should be obtained when the area exceeds the above limit. (G. R. No. 6473, dated 29th June 1908).

G. 24. Land Acquisition Act.—It is most inadvisable to acquire land ostensibly for one purpose and to use it for another purpose for which land could not be compulsorily acquired G. R. 9831 of 11-10-1909.

G. 25. Appropriations Annual statements of—Annual Statements of appropriations of land for public purposes sanctioned by Commissioners and prescribed by G. R. No. 6095 of 10-8-1904 should be discontinued.

G. R. 11506 of 6-12-1911.

G. 26.—Vide section 19, G 2.

G. 27. Rules under sub-section (4).—In exercise of the powers conferred by section 37, of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and section 50A sub-section (3) clause (c), of the Bombay District Municipal Act, 1901 (Bom. III of 1901,) the Governor in Council is pleased to make the following rules prescribing the notice required to be given of enquiries and orders under the said sections:—

1. (a) In the case of a proposed enquiry under section 37 of the Bombay Land Revenue

Code, 1879, or under section 50A of the Bombay District Municipal Act, 1901, a written notice of the enquiry and of the time and place and subject matter thereof shall be affixed, not less than ten days before the enquiry, in the following places, namely:—

- (i) Where the enquiry is to be held under section 37 of the Bombay Land Revenue Code 1879, at the chavdi or some other public place in the village, in which the property is situate ;
 - (ii) Where the enquiry is to be held under section 50A of the Bombay District Municipal Act, 1901, at the Municipal office;
 - (iii) In either of the said cases, in a conspicuous position upon the property with respect to which the enquiry will be held.
- (b) In either of the aforesaid cases a copy of the notice shall be served, not less than ten days before the enquiry, on all persons who are known or believed to have made any claim to the subject matter of the enquiry, and every such notice shall be served in the manner provided in section 190 of the Bombay Land Revenue Code, 1879, for the service of a summons.
- (a) Written notice of any order passed under section 37 of the Land Revenue Code, 1879, or under section 50A of the Bombay District Municipal Act, 1901, specifying briefly the subject matter, contents and date of the order passed, shall be served in the manner specified in clause (b) of rule 1 upon the persons referred to in that clause.

- (b) Such written notice shall also be affixed in the place or places specified in clause (a) of rule I.

(G. N. No. 8866 dated 13th September 1916.)

G. 28. **Weekly Bazar sites in Municipalities.**—Government in their Resolution No. 2579 dated 15th March 1918 forwarded to all Collectors for information and guidance the following opinions of the Remembrancer of Legal Affairs.

Question No. 1. Whether a Municipality is liable to pay occupancy price and rent for land which has never been formally granted to them free but has been used as the site of the weekly market since a time anterior to the establishment of the Municipality. Does the land vest in the Municipality, as being a market, under section 50 (2) (a) of the District Municipal Act?

Opinion of the Remembrancer of Legal Affairs.—“‘Market’ means ‘a public time and appointed place of buying and selling; also purchase and sale’ (see Wharton’s and Stroud’s dictionaries). Under section 50 (2) (a) of the Bombay District Municipal Act, 1901 public markets vest in the Municipality unless they have been specially reserved by Government. Under rule 35 of the Bombay Land Revenue Code Rules plots of open ground which have been dedicated to public use or already transferred to the municipality are declared to be specially reserved to Government.

In this case the site in question appears to have been used by the public as a weekly market from a period anterior to the establishment of the Municipality. It would therefore be a public market within the meaning of the Municipal Act. It would also apparently be a place dedicated to public use and transferred to the Municipality within the meaning of the Land Revenue Code Rule cited above. Consequently in my opinion it has been specially reserved by Government, but vests in the Municipality.”

Question No. 2. The question at issue is the legal one whether or not the Municipality is liable to pay occupancy price and rent for a market-site from which it derives profit but which existed before the Municipality came into being. The facts seem to be that the market did really exist before the Municipality was constituted.

Opinion of the Remembrancer of Legal Affairs.—"The present case relates to land at Jalgaon which has for a long period been used as a site for the weekly bazar. Even if the site was not so used before 1875 it would, on being appropriated to such use, have vested in the Municipality (which is said to have been established in 1864) under section 17 of Bombay Act VI of 1873 as a 'public market' not specially reserved by Government. The municipality now proposes to lease part of land for building, but not so as to interfere with the market. The question is whether Government can levy land revenue on such part of the land as the municipality may lease for building, and whether the Commissioner, when granting sanction to the lease under section 40 (2) of Bombay Act III of 1901, can stipulate that portion of the rent shall be paid by the municipality to Government as land revenue.

"2. The first question can be approached in three ways. Firstly the site of the market vests in the municipality by statute only *qua site* of a market, and if the land ceases to be so used, the corporation has no longer any title to it and the land reverts to its former owner: see *Gunendra Mohan Ghosh vs. Corporation of Calcutta* (1916), *Indian Law Reports*, 44 Calcutta 689. In my opinion the same principle must be applied to market sites as to streets. In this view it is open to Government to assess the land to land revenue when it ceases to be used as a market. If the municipality attempted to dispose of the land for building, it would cease to be market and would

revert in the original owner, so the municipality could not give the purchaser any title; Section 18 of Bombay Act VI of 1873 (cf. section 51 Bombay Act III of 1901) could not therefore apply in this case. The original owner to whom the land would revert (in a case like this where there appears to be no evidence of the original dedication or appropriation and the land did not apparently originally belong to the municipality) would be Government, on the principle embodied in section 37 of the Land Revenue Code, unless any person can make good a claim to it.

“ 3. Secondly, all land is liable to land revenue except when wholly exempted under especial contract or under a law (section 45, of the Land Revenue Code). This provision, enacted in 1879, only states the law as previously existing (cf. Bombay Regulation XVII of 1827, chapter I). Land vesting in a municipality by virtue of a statutory provision such as section 17 of Bombay Act VI of 1873 would not be relieved of this liability to land revenue merely because it vests in the corporation. Section 18 of the Act of 1873 does not exempt such land from land revenue; it merely states that the proceeds and rents of municipal property go to the municipal fund; but if the land, when it vests in the municipality, is liable to land revenue, the right or property of the municipality to or over the land only subsists subject to such liability. So far as appears from the papers, Government have never promised not to assess the land.

“ 4. Thirdly, rent may legitimately be distinguished from land revenue, and as section 18 of the Act of 1873 and section 51 of the Act of 1901 refer to proceeds and rent, they should not be read as referring to land revenue [for the distinction between the two, see *Sadashiva vs. Ramkrishna* (1901), *Indian Law Reports*, 25 Bombay 556].

“ 5. The foregoing opinion is not in accordance with that given by one of my predecessors (the late

Sir E. Fulton) in his memorandum (vide Government Resolution No. 6111 dated 9th September 1887) to the Revenue Department No. 1102 dated 23rd August 1887, but although direct authority is unfortunately scanty, I think I have given the correct view of what is undoubtedly a difficult question. Of course if land were granted by Government to a municipality, the liability of the land to land revenue would depend on the terms of the grant, express or implied; but here there is no evidence of a grant.

"6. The second question referred to in paragraph 1 above should in my opinion be answered in the affirmative. In a case where the land has not been exempted from land revenue it is lawful for the Commissioner to require, as a condition of granting sanction to the lease, that any land revenue which may be duly assessed on the land shall be paid in such lawful manner as he or Government may consider suitable (Land Revenue Code sections 52 and 146).

"7. The assessment of land revenue on land which has not been assessed before is not subject to the law of limitation."

G. O. No. 2579, R. D., dated 15th March 1918.

G. 29. Proposed amendment of section 37.—Government concur in Mr. Anderson's view that section 37 (3) of the Land Revenue Code gives finality to the Collector's order only and that fresh legislation is required to give similar finality to a Survey officer's order under that section. The following draft clause with the note explaining its object prepared by the Remembrancer of Legal Affairs, is approved:—

DRAFT CLAUSE.

Amendment of sec. 37 of Bombay V of 1879.	}	In sub-section 3 of sec. 37 of the Bombay Land Revenue Code, 1879, the words 'by the Collector' shall be repealed.
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NOTE.

Under sub-section 2 of section 37 of the Bombay Land Revenue Code, a collector or Survey officer is empowered to pass orders adjudicating a disputed claim to land or other property as between Government and any person; but while sub-section 3 gives finality to the decision of a collector after the lapse of a year from the original or appellate order, it does not provide in a similar way for the finality of the decision of a Survey officer. It was undoubtedly the intention of the original Bill II of 1912 which passed into law as Bombay Act XI of 1912 that the orders of both officers should be treated on an equality in this respect, and the report of the Select Committee makes it clear that they did not intend to make any distinction. The error was therefore, as it appears, clerical and the object of this clause is to rectify it.

2. The amendment should be included in the next Repealing and Amending Bill.

3. City Survey inquiry work should not be stopped pending legislation.

Order No. 11312 R. D. of 22-11-1916.

JUDICIAL DECISIONS.

<i>J. 1.</i> —	2	B. H. C. R.—345	<i>Vide J</i>	8
	8	B. H. C. R.—87	„ G	2
	I. L. R.	9 Madras 183	„ G	10
	„	9 Bombay 227	„ G	12
	„	14 Bombay 220	„ G	13
	„	16 „ 338	„ G	22
	„	17 „ 299	„ G	16
	„	18 B. 674	„ G	16
	„	17 A. 571	„ J	6
	„	23 B. 31	„ J	9
	„	23 B. 761	„ J	9
	„	24 B. 435	see N	3

J. 2. Beds of rivers &c.—Under sect 37, land formed by the waters of a sea, river &c. receding or having diverted from its original course vests

in Government. Land between high and low-water mark is presumably extra-parochial, and vests in the crown, unless title by grant or prescription is proved.

Sec. 37 embodies the common law of England which has been made applicable to India saving subsisting rights of individuals. A person claiming a right to dig stones in the bed of the sea below high-water mark must prove 60 years possession.

(i) 6 Moore's Indian Appeals 267.

J. 3. Section scope of.—Mere entry of lands in survey records as *Sirkari* does not constitute an act of possession and will not start limitation.

(i) 6 Bom. H. C. R. 125.

J. 4. Section scope of.—A customary right in, or a profit *a pendre* over a piece of land cannot be claimed by custom however ancient or uniform the exercise of that custom may have been.

(i) P. J. 1879 Page 274.

J. 5. Fishing.—The Right of the Public to fish in the sea and its subjacent soil is common, and is not the subject of property.

(i) I. L. R. 2 Bombay 19.

J. 6. (a) mere assertion of a right for over 60 years or,

(b) merely managing waste lands in a village which vest in Government.

(c) Or mere custom,

does not give anyone any title by prescription or otherwise.

(i) I. L. R. 3 Bom. 174.

(ii) I. L. R. 17 Allahabad 571.

J. 7. Waste lands.—Cultivation of plots in Government waste for a season or two does not constitute a property or possession of the person so cultivating. Dalhi or kumbri cultivation, for several generations, of patches of waste or warkas land does not create a proprietary title.

(i) I. L. R. 3 Bom. 452.

J. 8. Beds of rivers &c.—The occupants and owners of land abutting on streams have certain rights in the water that flows by their land and also in alluvial land formed by the side of their holdings.

(i) I. L. R. 7 Bom. 209.

(ii) 2 Bombay H. C. R. 345.

(iii) Sections 46 and 64 of L. R. C.

J. 9. The ownership of the bed of a stream or river within the limits of an Inam village vests in the Inamdar.

(i) I. L. R. 22 Bom. 377

(ii) I. L. R. 23 Bom. 31 to 46.

(iii) I. L. R. 23 Bom. 761.

J. 10. Adverse possession of Government.—Occupation by Government of certain land, believing to be Government, and constructing a building on it, none having claimed any rent &c for over 12 years, gives Government adverse possession against any person laying claim to it.

(i) I. L. R. 23 Bom. 137.

J. 11. Section scope of—This section applies to what is not the property of individuals I. L. R. 25 B. 299.

J. 12. The khots of the village of Bele Budruk in the Ratnagiri District asserted a claim to occupy and cultivate lands left dry in the river bed as far as the middle of the bed opposite their Khoti village. The lands in question were treated for nearly a 100 years as a part of the village. *Held* that the plaintiffs were entitled to the right claimed and that sec. 37 presented no bar to the claim. (Secretary of State vs. Wasudeo, 1907, I. L. R. 31 Bombay, 456, 1906.)

J. 13. When a collector passes an order, under the provisions of section 37 of the Land Revenue Code (Bombay Act V of 1879) with reference to land which is *prima facie* the property of an individual who has been in peaceful possession thereof

- . and not of the Government, he is not dealing with the Land in his official capacity, but acting *ultra vires*.

(I. L. R. 36 Bombay 325.)

Lands
may be
assigned
for special
purposes,
and

when
assigned
shall not be
otherwise
used
without
sanction
of the
Collector,

^a] **38.** Subject to the general orders of Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII [^b], and at any other time for the Collector [^c], to set apart lands the property of Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise [^d] used without the sanction of the Collector [^c]; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

[a] As to the local repeal of s. 38, see para. 5 of foot-note [a] on p. I, *supra*.

[b] Words repealed by Bom. III of 1886 are omitted.

[c] "Collector" was substituted for "Commissioner" by Bom. IV of 1905, 1st Sch.

[d] This word was substituted by Bom. IV of 1913, s. 11, for the original words "appropriated or assigned".

SUMMARY (s. 38).

Section—meaning of	...	...	N 1, G 9.
Rules under	...	...	N 2.
Appropriation	...	...	G 10.
Assignments—Ancient	...	...	J 2,
Burial ground	...	...	G 5, 8.
Gairan lands	...	...	G 1.

Military purposes			
(1) camping grounds ...	...		G2, 6.
(2) cantonments ...	...	G 2, 3, 4.	
(3) others ...	...		G 2
Open air spaces in municipal areas		G 11, 12.	
Survey officers, power of	...		N 3
Threshing floors ....	...	G 7, 13, 16.	
Village sites ...	...	G 13, 15.	

NOTES.

N 1 No private rights exist in lands assigned under sec. 38. No private rights in such lands can accrue while the assignments continue. The erection of huts or other structures on such lands or the recovery of rent in respect of them by private persons is unauthorised and illegal.

It is advisable that the purposes for which existing assignments have been made should be distinctly specified in the revenue records and should be notified to the villagers.

N 2, Rules—Vide.

N 3. This section gives the * * * Collector, the power of setting apart lands for public purposes; but the arrangement by which that power is to be exercised by Survey Officers, while survey operations are proceeding, is not thereby disturbed. (Select Committees's Report on the Revenue code Bill.)

GOVERNMENT ORDERS.

G. 1. Change of assignments.—Government are not divested of the right to modify assignments on account of "Gairan" or land set apart for free pasturage by the words of this Act. (G. R. No. 3121, dated 18th May 1888.)

G. 2. Land assigned for military purposes not to be used for any other purpose.—No land (1) within cantonment limits, (2) forming part of (a) military encamping ground, (3) otherwise held for military purposes shall be used or occupied by

railway, or otherwise, without the sanction of Government of India in the Military Department. (This G. R. Cancels G. R. No. 9085, dated 18th November 1892.) (Government of India, in their Military Department No. 415, dated 27th February 1893, in G. R. No. 1978, dated 16th March 1893.)

G. 3. Cantonment.—Land within cantonment limits should not be granted for the purpose of erecting cotton presses. (G. R. No. 2817 dated 21st April 1893.)

G. 4. Cantonments.—Applications for the transfer of lands in Cantonments to the Civil Departments should be submitted to the Government of India in the Military Department for sanction through the local Military authorities only. (G. R. No. 8678, dated 23rd October 1894.)

G. 5. Burial Grounds.—A portion of service Inam land was assigned for a burial ground, the *judi* on the land being reduced (G. R. 2347 of 16-3-96.)

G. 6. Camping grounds for Troops.—Curtailement of camping ground specially assigned for troops is not allowed. (G. R. No. 6881, dated 16th September 1897.)

G. 7. Assignment different from appropriation.—The orders conveyed in G. R. No. 8558, dated 6th December 1882 R. D. and in entry No. 3 of *Schedule A* appended to G. R. No. 720, dated 8th March 1887, F. D., restricting within certain limits the powers of Commissioners to sanction, under Section 37, the *appropriation* of lands, for roads, schools, dharmashalas and other public purposes, were not intended to apply to assignments of lands under Section 38. The grant of land for threshing floors is an instance of such an assignment, and may be disposed of by the Commissioner on his own authority. (G. R. No. 3317, dated 12th May 1899.)

G. 8. Burial ground.—Where burial ground is provided by purchasing private land, the cost

should be met from local funds, as the duty devolves on Local authorities (G. R. 4953 of 9-8-1900)

G. 9.—The word "Collector" was substituted for "Commissioner" by Bombay IV of 1905, First Schedule—Such assignments being revocable are apparently no more than "licenses" within the meaning of chapter VI of the Easements Act (V of 1882) and confer no right to hold land as against Government. G. R. 4347 of 25-6-1902 (3) I. L. R. 21 B 684.

G. 10. Collector's Power.—The authority to transfer lands to other Departments should be delegated to Collectors; such transfers cannot be regarded as assignments. (Entry 19 of G. R. No. 4347, dated 25th June 1902.)

G. 11. Open air spaces—the following conditions are generally attached to assignments of lands for use as open air spaces in municipal areas:—

- (a) the site shall be preserved for the free use of the public and no other purpose,
- (b) no building or other structure shall be erected upon it,
- (c) it shall be kept clear and free encroachment except as provided in condition (d)
- (d) as far as possible and where suitable it shall be planted with trees and flowers, provided with benches fountains and the like and if necessary enclosed with suitable fences, and
- (e) such other conditions as may be considered essential in the circumstances of the locality.

The Collector of the district shall see necessary note as to the assignment of the land is made in the survey registers and shall take measures for ensuring that the conditions shall be carefully observed and the Commissioner shall satisfy himself when he visits the town that they have not been infringed.

G. R. Nos. 5319 dated 12th July 1904,
10078 dated 6th October 1908,
12447 dated 7th December 1908.

G. 12. Government sanction is necessary for assigning an open air space to a municipality (G. R. 4306 dated 27 April 1907.)

G. 13. Threshing floors.—When land is acquired at the expense of the villagers for assignment as a threshing floor etc., the amount contributed by the villagers should be credited in the accounts. If the cost should exceed the amount, the excess should be recovered from the villagers. Should the cost be less than the contribution, the balance may be expended by the Collector upon the improvement of the land acquired. (G. R. No. 4804 dated 28th May 1910).

G. 14. Village sites.—A Collector can appropriate lands for village sites (G. R. No. 5295 dated 1st June 1911, Entry 16).

G. 15. Collectors may grant sites revenue free inside a village site where the assessment capitalised at 4% does not exceed Rs. 100 (G. R. No. 9193 dated 29th September 1911).

G. 16. Threshing floors.—Government provided the villagers with land required for Khālvadi by acquiring it under the Land Acquisition Act at the cost of villagers. The land thus acquired was made over to the villagers for use as Khālvadi subject to the payment of the agricultural assessment on the land.

Note:—Ordinarily the distribution of land set apart for threshing floors should be left to the villagers. If disputes arise, proper orders may be issued. (G. R. No. 4748 of 18-5-1912).

JUDICIAL DECISIONS.

J. 1. I L. R. 21 Bombay 684 *vide* G-9.

J. 2. "Land set apart for special purposes" is not confined to lands set apart under Section 38

Land which has from time immemorial been used as a public road, is none the less set apart for that purpose though this may have taken place years before survey operation took place under Chapter VIII of Land Revenue Code (Pranlal *vs*, the Secretary of State P. J. 366 of 1897.)

[^a] **39.** The right of grazing on free pastu-^{Regulation of use of}
rage lands shall extend only to the cattle of the ^{pasturage.}
village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector with the sanction of the Commissioner.

The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

(a) As to the Local repeal of s. 39 see para 5 of footnote (a) on page 1, *Supra*.

G. I. Grazing on sides of roads.—“The right of grazing on roadsides should not be sold. (G. R. No. 5312, dated 28th June 1882.)

J. I. The phrase “village cattle” does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. (I. L. R. 2 Bombay, 110.)

[^a] **40.** In villages, or portions of villages,^{Concession of Govern-}
of which the original survey settlement has been ^{ment}
completed before the passing of this Act, the ^{rights to}
right of Government to all trees in unalienated ^{trees in}
land, except trees reserved by Government, or ^{case of}
by any survey officer, whether by express order ^{settle-}
made at, or about the time of such settlement, ^{ments}
or under any rule, or general order in force at ^{completed}
the time of such settlement, or by notification ^{before the}
made and published at, or at any time after such ^{passing of}
settlement shall be deemed to have been conceded ^{this Act.}
to the occupant. But in the case of settlements

completed before the passing of Bombay Act I of 1865 [b] this provision shall not apply to teak, black-wood or sandalwood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

Ditto
in case of
settle-
ments
completed
after the
passing of
this Act.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

Ditto
in case of
land taken
up after
completion
of settle-
ment.

When permission to occupy land has been, or shall hereafter be granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land which may not have been, or which shall not hereafter be expressly reserved at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of a village.

[a] As to the local repeal of s. 40, see para 5 of foot-note (a) on p. 1, supra.

[b] Bom. I. of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

SUMMARY (s. 40)

Section—meaning of ...	...	...	N 1
rules under ...	...	...	N 2

Trees—rights of

(1) Government	...	...	N 1, G 1, G 2.
(2) holders of land under the ordinary survey tenure	...	...	J 4
(3) holders of land on restricted tenure	...	...	G 3
(4) holders of land in Kanara	...	J 2	
(5) „ in South Konkan	...	J 2	
(6) holder of Warkas land in Thana	J 3		
(7) Maktedar of a village	...	G 4	
(8) Tenant at-will of Government...	J 5		

NOTES.

N. 1.—section 40, meaning of—The following classification will make the meaning clear:—

1	2	3
Villages.	Government right to trees in unalienated lands in the villages &c	occupant's rights to trees in the lands
I. Villages in which original settlement was introduced <i>before</i> 17-7-79		
(a) <i>before</i> the date (7-1-65) of Act I of 1865	(1) Teak, blackwood and sandal wood unless conceded by express words. (2) Trees reserved at or before the original settlement. (3) Trees reserved at any time after such settlement.	All other trees
(b) between the date (7-1-65) of Act I of 1865 and 17-7-79	Trees referred to in (2) and (3) Above	All other trees
II. villages in which the original settlement was introduced <i>after</i> 17-7-79.	Trees referred to in (2) above	
III. In the case of land taken up <i>after</i> the original settlement	(1) Trees referred to in (2) above (2) Trees <i>expressly</i> reserved at the time of granting permission to occupy the land.	

N. 2. rules—*Vide*. Rules under s. 214.

GOVERNMENT ORDERS.

G. 1. Trees-rights of Government.—The legal position of Government in respect of forests and rights to trees was circulated with G. R. No. 2493 dated 4th May 1881 [*Vide* Cordeaux's compilation (1893) pages 138 to 144].

G. 2. Trees-rights of Government.—A summary of all the important orders &c is also given in the Standing orders of Government (R. D.) pages 1933-1968.

G. 3. Trees in lands on restricted tenure.—Trees should be reserved when land is sold on restricted tenure.

G. R. 2564-17-4-03

5033-22-7-02

G. 4. Trees-rights of Maktedar.—A Maktedar of a village has no property whatever in the soil and consequently none also in the trees planted by him, when the Makta or lease expires.

G. R. 795 of 20th November 1909

6 B. H. C. R.—191.

I L R 16 Bombay 547

„ 22 Calcutta 742

„ 30 Allahabad 134

Broom's maxims (7th Edition) page 305.

JUDICIAL DECISIONS

J. 1.—6 B. H. C. R. 191

16 B Y..... 547

22 Cal 742

30 Allahabad 134

} *Vide G 4*

J. 2.—In the South Konkan, Dunlop's proclamation of 1824, and in Kanara Harris' proclamation of 1823 are relied upon by landholders as giving them certain rights to timber. These proclamations are quoted in

8 B H. C. R. 2

and

I. L. R. 3 Bombay 728 respectively.

Section 40—

Add' the following note to J. 2 :—

*“ Note.—The Dunlop proclamation applies to *khalas* as well as to *kholt* lands.”*
(G.R. No. 8049/24, dated 22-3-1929.)

J. 3—Rights to trees in Warkas lands in the Thana district are determined in the case of *Wasudeo vs. the Collector* at P. J 1879, pages 274-287.

J. 4—An occupant under the ordinary survey tenure loses all rights created by him in respect of trees when the land is forfeited for default in the payment of land revenue (10 B. H. C. R. 419) -

J. 5. When a purchaser from a tenant at will of Government on having been given a notice to quit puts forward a claim for the value of the trees planted by him, such purchaser has no valid title to trees as a mere tenant of land in the absence of a special agreement. On the expiration of a tenancy and reversion of land to the State, all private rights therein would become extinct, and a claim to enjoy usufruct of trees in the same cannot be put forward against Government (6 B. H. C. R. -188).

41. The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brush-wood, jungle, or other natural product growing on land set apart for forest reserves under section 32 of Bombay Act I of 1865 [a] or section 38 of this Act, and to all trees, brush-wood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as Government may from time to time direct.

Government
trees and
forests.

[a] Bom. I of 1865 (except ss. 37 and 38) is repealed by S. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

SUMMARY (Sec. 41)

Section-meaning of	...	...	...	N 1
Rules under	...	...	...	N 2

.....

Timber-free grants of—have from Govern-

ment waste lands ... G 12, G 14

Trees-Babhul ... G 3, G 10

Trees-encouraging the planting of G 15, G 18, G 21

Trees-fruit ... G 10

Trees in—

(1) Forest lands ... N 3, G 1

(2) Government lands ... G 1, G 2

(3) Occupied survey nos. ... G 2, G 13

(4) Open spaces in village sites ... G 11

(5) Railway limits... G 8

Trees-rights of—

(1) Dist. H. Officers

(a) commuted ... G 17

(b) uncommuted ... G 4

(2) Gadkaris ... G 20

(3) Service Inamdars—

(a) in Government villages

and kadim—in alienated

villages ... G 5, 6, 7, 9, 16, 19. J 1

(b) Jadid—in alienated villages G 7

N. 1. Section, meaning of.—The words 'or other natural product' were added with the view of protecting existing rights of Government to such products as lac, honey, gum, resin, catacha etc. (Leg. pro. 1877 page 132)

N. 2. Rules.—*Vide*

N. 3. Trees in Forest lands.—As regards the disposal of trees in Forest lands *Vide* Standing orders of the Forest Department.

No. 20

Section 41—

In N. 3 for “Standing Orders of the Forest Department” *substitute*
“Bombay Forest Manual”.